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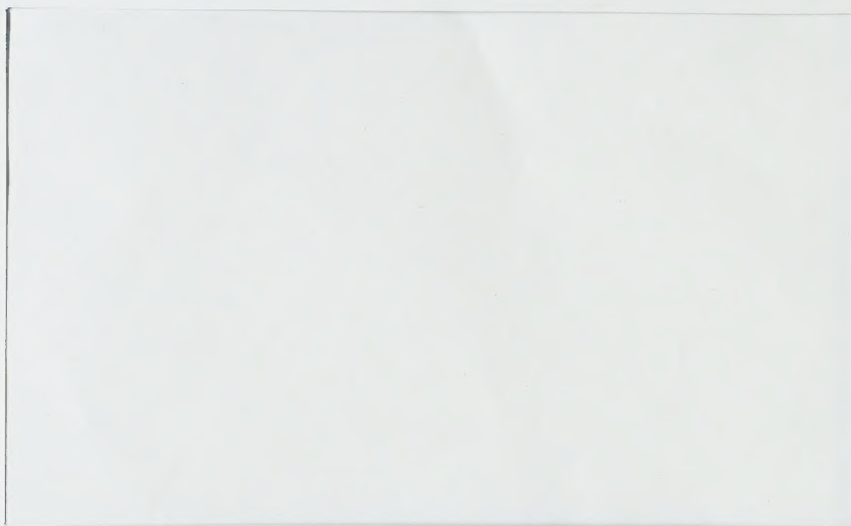
AUTO INSURANCE IN ONTARIO

*Current Issue Paper 154*



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## AUTO INSURANCE IN ONTARIO

*Current Issue Paper 154*

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## INTRODUCTION

Automobile insurance has been a recurring public issue in Ontario for more than 30 years. In that time, several prominent studies have been conducted on the subject, and two major auto insurance bills have been passed by the Ontario legislature. And with the news that auto insurance rates have been rapidly increasing over the last year, the issue has once again caught the public's attention.

Until June 1990, motor vehicle accident compensation in Ontario was provided primarily on the basis of who was at fault in an accident, with limited "no-fault" benefits available to all persons who sustained a loss as a result of the accident. Early studies found that the fault system was inefficient, costly, and left the majority of accident victims without compensation. To address these problems, these studies recommended a move toward a no-fault system under which compensation would be provided to a wider range of accident victims, regardless of fault.

But it was not until the insurance "crisis" of the mid-1980s, which saw rapid increases in the cost of liability insurance, that serious consideration was given to fundamentally changing the fault system. Following three more government sponsored reports, the Liberal government enacted Bill 68 in June 1990. The new plan established a so-called "threshold" no-fault system, under which the right to sue was eliminated for all but the most seriously injured accident victims. In return for the loss of the right to sue, the plan provided significantly increased no-fault benefits. While compensation under the new plan was based on the concept of no-fault, the fault system was retained for the purposes of determining premium rates for drivers. Although the government argued that the new plan was superior to the fault system in several respects, it appears that the reduction of costs, and, therefore, the stabilization of premium rates, was the driving force behind Bill 68.

In response to perceived deficiencies in Bill 68, the NDP government enacted Bill 164. The Bill, which took effect on January 1, 1994, enhanced the no-fault benefits established under Bill 68, eliminated the right to sue for economic loss, and expanded the right to sue for non-economic loss.

This paper briefly outlines the development of auto insurance in Ontario, describes and compares the main features of Bill 68 and Bill 164, and discusses the reasons why auto insurance is again a current issue. Recent developments in other provinces are also noted.



## AUTOMOBILE INSURANCE IN ONTARIO BEFORE BILL 68

### The Fault System

Prior to Bill 68, motor vehicle accident compensation in Ontario was based on the fault system (also known as the "tort" system). Under this system, a person could recover damages for injuries sustained in an automobile accident only if that person could establish that his or her damages resulted from the fault of another (e.g., the driver of the other car). Injured persons who could establish the fault of another were entitled to sue the at-fault party for compensation for economic loss (usually loss of income) and non-economic loss (pain and suffering, loss of amenities of life and loss of expectation of life). Any compensation awarded by a court would be paid by the at-fault party's insurance company. The level of compensation was determined according to the principles of negligence law, as established by the courts on a case-by-case basis.

Injured persons who were at fault, or who could not establish the fault of another, were not entitled to sue for damages.

In addition, the fault system as it existed prior to June 1990 provided limited "no-fault" benefits to all injured persons, regardless of who was at fault in an accident. These benefits were set out in a regulation made under the *Insurance Act* and were paid directly to an injured person by his/her own insurance company. Prior to Bill 68, no-fault benefits included:

- ▶ \$25,000 per person for medical and rehabilitation costs (excluding OHIP payments);
- ▶ income replacement benefits of up to \$140 per week for two years;
- ▶ death benefits of \$10,000 for the death of the head of the household; and
- ▶ funeral expenses of up to \$1,000.<sup>1</sup>

Car owners were required by statute to purchase a minimum of \$200,000 in third party liability coverage to cover claims made by others injured in an accident. Drivers were also required to purchase the no-fault benefits coverage prescribed by the *Insurance Act* regulations. Insurance coverage for damage to one's own vehicle was optional.



Thus, when a person was injured in a motor vehicle accident in Ontario prior to June 1990, the injured person had an unrestricted right to sue in court for economic and non-economic loss, provided the fault of someone else could be established. The injured person would have been compensated by the at-fault party's insurance company. In addition, anyone injured in an automobile accident would have been entitled to the limited no-fault benefits provided in his or her own policy.

Premium rates under the fault system were determined by factors such as age, sex, marital status and driving record. (Note: These factors continue to apply today.)

## **Studies of Automobile Insurance Prior to Bill 68**

Several important studies of auto insurance in Ontario have been conducted in the last 30 years, most of which focused on the fault/no-fault debate. The following is a summary of the most significant of these reports.

### ***Report of the Osgoode Hall Study on Compensation for Victims of Automobile Accidents: 1965<sup>2</sup>***

This report analyzed the adequacy of compensation under the tort-based system, with a view to establishing a set of statistics which could be used in the development of auto insurance reform. The study's most significant finding was that 57.1% of those injured in an automobile accident received nothing under the tort system, and that only 63.1% of those who did receive some compensation recovered all of their economic losses. Significant delays in the processing of tort claims, especially in cases involving seriously injured victims, were also found. In addition, the study revealed that many accident victims were hostile toward a compensation system based on the adversarial system, and that most victims supported a system which provided at least some compensation without regard to fault.

### ***Ontario Law Reform Commission: 1973***

In its *Report on Motor Vehicle Accident Compensation*,<sup>3</sup> the Ontario Law Reform Commission found that the fault system was "inadequate, inefficient, slow and expensive." The Commission also concluded that



providing compensation on the basis of fault was inappropriate, since personal injury and property damage are, to a large extent, the inevitable result of motoring. Accordingly, the Commission recommended that the right to sue be eliminated, and that a no-fault system be adopted. Under the system proposed by the Commission, compensation would be provided for all economic losses, but not for non-economic loss.

### ***Select Committee on Company Law: 1977-78***

In 1976, the Ontario Legislature's Select Committee on Company Law was given a mandate to review the law governing the insurance industry, including the law respecting motor vehicle accident compensation. In its *First Report on Auto Insurance* (1977),<sup>4</sup> the Committee recommended that auto insurance be made compulsory (Note: Auto insurance became compulsory in 1980). In its *Second Report on Auto Insurance* (1978),<sup>5</sup> the Committee recommended that a no-fault system be adopted, under which all accident victims would be compensated for economic loss, regardless of fault. Compensation for non-economic loss would also be included in the no-fault plan, based on a fixed scale which would set the exact amount of compensation for each type of injury. Accident victims who sustained "serious and permanent injury" would be entitled to sue for any non-economic loss beyond the amount of compensation received under the no-fault portion of the plan.

### ***Slater Report: 1986***

By the mid-1980s, it was widely seen that rising costs and premium rates would make liability insurance unaffordable. In response to this perceived crisis, the Ontario government appointed the Task Force on Insurance in 1986, chaired by Dr. David Slater. The Task Force was directed to study the availability, cost and adequacy of general liability insurance in Ontario. Although auto insurance was not the primary focus of the Task Force mandate, its report included some specific findings and recommendations in that area.<sup>6</sup>

Specifically, the Task Force found that the liability insurance crisis in Ontario, particularly in the area of automobile insurance, was due to an increase in the frequency of bodily injury claims and the average cost of those claims. Moreover, the Task Force attributed the increased use



of the court system to secure compensation to the inadequacy of the existing no-fault accident benefits system.

Although the Task Force found no immediate crisis of price or availability in automobile insurance, it predicted that serious problems would inevitably develop. It recommended the adoption of a pure no-fault system, under which the right to sue would be completely eliminated, and all accident victims would be compensated directly by their own insurance companies for economic loss. In the alternative, it recommended that the right to sue be retained only for the most seriously injured.

### ***Osborne Report: 1988***

Following the release of the report of the Task Force on Insurance, the Liberal government appointed the Honourable Mr. Justice Coulter Osborne, a judge of the Ontario Supreme Court, to head an inquiry into virtually all aspects of auto insurance in Ontario. Justice Osborne was specifically directed to report on the adequacy, timing and fairness of the existing compensation system, and the consequences of implementing different types of no-fault plans.

The essence of the Osborne Report's recommendations<sup>7</sup> was that the fault system should be retained, but with substantially increased no-fault benefits, and with reform in the area of tort law. Justice Osborne had found that no-fault plans were superior to the fault system in terms of compensation, and would be slightly less costly to operate. But he argued that the fault system should be retained, since no-fault systems are inherently unfair in providing the same level of compensation to persons who cause accidents as to those who are "innocent." Justice Osborne also argued that the tort system has a modest deterrent effect on bad driving.

The main recommendations of the Osborne Report were rejected by the government. One explanation for this rejection is that the government had expected the Report to recommend expanding the no-fault system.<sup>8</sup> This expectation was probably based on the fact that previous studies had recommended such a move, and on the government's belief that insurance premiums were threatening to increase dramatically. It has also been pointed out that the conclusions reached in the Osborne Report were based primarily on loss costs (i.e., the amount insurance companies have to pay out for claims) for the year 1986, a year in which loss costs in the auto insurance sector were

unusually low. Proceeding on the assumption that loss costs had stabilized, the Osborne Report concluded that the fault system could be maintained, with enhanced no-fault benefits, and not produce an unreasonable increase in premiums. In fact, loss costs for 1987 and 1988 were substantially higher than those for 1986, thus rendering the assumptions in the Osborne Report invalid.<sup>9</sup>

### ***Ontario Automobile Insurance Board: 1989***

The Ontario Automobile Insurance Board was established in February 1988. The original mandate of the Board was to conduct industry-wide hearings on premium rates and a new classification system, and then set premium rates.

Although the Board authorized two premium increases of 7.6% in February and June of 1989, it has been suggested that losses for insurance companies over this period were rising at twice the rate premiums were permitted to increase.<sup>10</sup> The failure of the rate control policy prompted the government to suspend its proposed new classification system, which would have eliminated age, sex and marital status as rating factors, until more fundamental reforms could be introduced.

On March 2, 1989, the government ordered the Board to hold public hearings on three types of no-fault plans. However, the Board, which had been directed to act as a finder of fact, went out of its way in its July 1989 report to criticize all three plans.<sup>11</sup>

## **BILL 68**

### **Background**

By the fall of 1989, the Liberal government was under enormous pressure to deal with the problem of rising auto insurance rates. The insurance industry argued that the rate increases allowed by the Ontario Automobile Insurance Board were not nearly sufficient to cover rising costs, and responded to the attempts at rate control by refusing to issue policies to "risky" drivers. This action forced more drivers into the Facility Association, the insurance industry's pool for high risk drivers, where premium rates are exorbitant. Insurance companies also warned the government that premiums would rise by 30-35% if the system was not reformed. The increasing difficulty in



obtaining insurance and the prospect of further significant rate increases was clearly unacceptable to Ontario drivers.

## Government Rationale

The government's answer to the problem was Bill 68 (also known as the Ontario Motorist Protection Plan),<sup>12</sup> which proposed to amend the *Insurance Act* by establishing a new no-fault auto insurance system in Ontario. Specifically, the Bill proposed to significantly restrict the right to sue, so that only the most seriously injured accident victims could use the court system to seek compensation for their injuries. In return for giving up the right to sue, all accident victims would have access to enhanced no-fault benefits.

The government believed that the Bill would stabilize claims costs and rate increases in two ways. First, the Bill would eliminate the costs associated with the growing number of law suits for relatively minor injuries. Second, by providing the bulk of accident compensation in accordance with a pre-determined schedule of no-fault benefits, the Bill would make claims costs more predictable and, therefore, make premiums more stable and affordable.

Bill 68 was opposed by the Conservative Party and the NDP, primarily on the ground that most innocent accident victims would lose the right to sue under the new plan. The Bill came into effect on June 22, 1990.

## Right to Sue

Under Bill 68, a person injured in a motor vehicle accident in Ontario was entitled to sue for damages only if the injured person could prove that his or her injuries were caused by the fault of someone else, and the injured person sustained:

- (a) permanent serious disfigurement; or
- (b) permanent serious impairment of an important bodily function caused by continuous injury which was physical in nature.<sup>13</sup>

Relatives of an insured person who was killed in an accident could also sue for damages under the *Family Law Act*.

This was the so-called "threshold" test an injured person had to meet to be entitled to sue for damages. An innocent accident victim who met the threshold requirements could sue for economic and non-economic loss, but had to deduct from the claim the amount of any no-fault benefits received under the plan.

A controversial aspect of the new threshold system was that victims who sustained psychological injuries were denied the right to sue.

Thus, only the most seriously injured accident victims (and then only those with physical injuries) were entitled to sue under Bill 68's no-fault system. In fact, it was estimated that the threshold would eliminate the right to sue for 94% of those who could sue before Bill 68. This limited right to sue significantly reduced costs in the insurance system.

## No-Fault Benefits

An injured person who did not meet the threshold test described above, but who sustained physical, psychological or mental injury as a result of an accident, was entitled to the no-fault benefits set out in the regulations to the *Insurance Act*.<sup>14</sup> These benefits, which were provided by the driver's own insurance company, are summarized below. (Note: As a general rule, passengers and pedestrians injured in car accidents receive no-fault benefits from their own insurance companies. If they do not have insurance, then they look to the insurance company covering the car in which they were a passenger or which struck them. This rule also applies under Bill 164.)

- ▶ *Supplementary Medical and Rehabilitation Benefits* — All reasonable expenses, up to a maximum of \$500,000, payable for a period of 10 years.
- ▶ *Long-Term Care Benefits* — Compensation for all reasonable expenses up to a total maximum of \$500,000, payable at a maximum rate of \$3,000 per month.
- ▶ *Death Benefits* — If an insured died as a result of injuries sustained in an accident, the surviving spouse received \$25,000. Surviving dependants received \$10,000 each.
- ▶ *Funeral Expenses* — If the insured died, a maximum benefit of \$3,000.



- ▶ *Weekly Benefits (Income Replacement)* — Accident victims employed at the time of an accident and who experienced a "substantial inability to perform the essential tasks of employment" were entitled to the lesser of \$600 per week or 80% of gross weekly income. Benefits were payable for up to three years, but were payable for life if the victim was totally disabled. Unemployed persons (including students, retirees and unpaid home-makers) who were at least 16 at the time of the accident were entitled to a weekly benefit of \$185.

Bill 68's no-fault benefits were not indexed to inflation.

## Determination of Premium Rates

Although the new plan was described as "no-fault," this was only true with respect to the provision of compensation. Premium rates for drivers continued to be determined by the factors that had been used under the fault system, including age, sex, marital status, and the driving record of the driver.

## Property Damage

Prior to Bill 68, a driver was covered for damage to his or her vehicle if the driver had collision insurance. Otherwise, the driver could only recover by suing the at-fault party. Under Bill 68, the basic insurance policy provided that an insured was entitled to compensation from his or her own insurance company for loss or damage to the insured vehicle, to the extent he or she was not responsible for the loss or damage. For example, if the insured was 75% at fault, he or she would only receive compensation for 25% of the loss or damage to the vehicle. Vehicle owners could purchase full collision coverage in addition to the no-fault coverage.

## Alternative Dispute Resolution

Bill 68 established a new alternative dispute resolution mechanism under which an insured or an insurance company could refer any dispute over an insured's entitlement to no-fault benefits, or the amount of such benefits, to a mediator. If mediation failed, the insured

(but not the insurance company) could either refer the dispute to arbitration or begin a court action.

## Ontario Insurance Commission

Bill 68 established the Ontario Insurance Commission to replace the office of the Superintendent of Insurance as the regulator of the insurance industry in Ontario. The Commission was given power to approve the way in which insurance companies classified drivers and the level of auto insurance rates.

## BILL 164

### Background

While in opposition, the NDP supported a publicly run auto insurance system that included an unrestricted right to sue for innocent accident victims, and provided an adequate level of no-fault benefits (i.e., similar to the plans that existed in Manitoba, Saskatchewan and British Columbia at the time). The NDP had argued that a non-profit public company could run a tort-based compensation system more cheaply than the privately run tort system that existed in Ontario prior to Bill 68.

However, when the NDP formed the government in 1990, insurance rates had stabilized, at least for the time being, under Bill 68's threshold no-fault system. And when the insurance industry warned that a public system could threaten the jobs of thousands of workers in the auto insurance field, the government opted to address perceived deficiencies in the system established under Bill 68.

### Government Rationale

Bill 164,<sup>15</sup> introduced by the NDP government in December 1991, took effect on January 1, 1994. The Bill enhanced the no-fault benefits established under Bill 68, eliminated the right to sue for economic loss, and expanded the right to sue for non-economic loss.

In a background document to Bill 164, entitled "The Road Ahead", the government outlined the following deficiencies in Bill 68.<sup>16</sup>



- ▶ *Inadequate accident benefits* - Benefits were currently not indexed for inflation; the long term care and rehabilitation benefits were limited in terms of amount and the time for which they were available; existing benefits did not recognize the special circumstances of such individuals as students or those who are temporarily unemployed.
- ▶ *Restricted right to sue for pain and suffering* - Under the existing threshold system, too many accident victims, including those who sustain psychological injuries, were prevented from recovering compensation for pain and suffering through the courts.
- ▶ *Higher profits in the insurance industry* - Although Bill 68 created substantial savings for insurance companies, there was little indication that these savings had been passed along to the consumer.
- ▶ *Confused consumers* - Consumers were confused by the lack of consistency in the way the insurance industry conducts business.
- ▶ *Residual market* - In an effort to keep costs down, insurance companies preferred to write policies only for low-risk drivers, thus leaving too many drivers with good driving records no option but to buy expensive insurance from the residual insurance market (the Facility Association).

## Right to Sue

Under Bill 164, an innocent (i.e., not at fault) accident victim has a right to sue for non-economic loss (pain and suffering, loss of amenities of life and loss of expectation of life, and loss of care, guidance, and companionship under the *Family Law Act*), if, as a result of the accident, the person sustained:

- (a) serious disfigurement; or
- (b) serious impairment of an important physical, mental or psychological function.<sup>17</sup>

Relatives of a person killed in an accident also have the right to sue for damages under the *Family Law Act*.

However, any damages awarded for non-economic loss (other than loss of care, guidance and companionship), are subject to a deductible

of \$10,000. Damages awarded for loss of care, guidance and companionship are subject to a \$5,000 reduction. The \$10,000 and \$5,000 deductibles are indexed to inflation.

The effect of Bill 164 on the right to sue is that all innocent accident victims are entitled to sue for non-economic loss, if they meet the new threshold test, and subject to the deductible amounts. No one injured in an accident can sue for economic loss under the new system.

Thus, the right to sue provisions of Bill 164 differ from those in Bill 68 in the following ways:

- ▶ The wording in Bill 164 expands the right to sue in that the threshold test does not require that injuries be "permanent" and "continuous." Bill 164 is also less restrictive in that it gives those who have sustained "mental or psychological" injuries the right to sue.
- ▶ Bill 164 is more restrictive in that it completely takes away the right to sue for economic loss, whereas Bill 68 allowed those who met the threshold test to sue for both non-economic and economic loss.
- ▶ Under Bill 164, any amount awarded for non-monetary loss by a court is subject to the deductible amounts of \$5,000 and \$10,000.

## Statutory Accident Benefits

Under Bill 164, "no-fault benefits" were re-named "statutory accident benefits." These benefits, contained in the regulations to the *Insurance Act*, are available to all accident victims who sustain an "impairment," a term defined in the regulations to mean "a loss or abnormality of psychological, physiological or anatomical structure or function."

The following is a summary of the statutory accident benefits provided under Bill 164.

- ▶ *Income Replacement Benefits* - Benefits are available to persons who are employed at the time of an accident, if they experience a substantial inability to perform the essential tasks of employment. Benefits are also available to those who were unemployed at the time of the accident, if they had been employed at some point during the three years before the accident. Victims receive 90% of net employment income loss, up to a maximum of \$1,000 per

week. Benefits are available for two years, at which time victims who are permanently disabled receive the loss of earning capacity benefit. At age 65, pension benefits are available.

- ▶ *Education Disability Benefits* - Lump sums of between \$2,000 and \$4,000 are payable for each year of school missed. A weekly benefit of 50% of net average earnings is payable after age 16.
- ▶ *Loss of Earning Capacity Benefits* - After two years, Loss of Earning Capacity benefits are available to those who were receiving weekly income replacement benefits or weekly education disability benefits, and who continue to experience total or partial disability. The maximum amount of the loss of earning capacity benefits is \$1,000 per week.
- ▶ *Supplementary Medical Benefits and Rehabilitation Benefits* - All reasonable medical and rehabilitation expenses are covered. The maximum amount for all medical and rehabilitation expenses is \$1,000,000.
- ▶ *Attendant Care Benefits (Long-Term Care Benefits)* - Covers the cost of services provided by a qualified care-giver to an insured person injured in an accident, as well as all reasonable expenses for providing care to the insured as a result of the accident. The total amount of this benefit is unlimited, but payments cannot exceed \$10,000 per month.
- ▶ *Death Benefits* - A benefit of between \$50,000 and \$200,000 is payable to the surviving spouse, or to the dependants if there is no spouse. Each surviving dependant receives a benefit of \$10,000.
- ▶ *Funeral Benefits* - Up to a maximum of \$6,000.

Accident benefits, with the exception of the disability benefits for those outside the workforce, are indexed for inflation.

## Determination of Premium Rates

Although the original version of Bill 164 contemplated a new system for determining a driver's premium rate, which would not be based on such factors as age, sex and marital status, such a system has yet to be approved. Thus, the same factors used in determining rates under the fault system and under Bill 68 continue to be used under Bill 164.



## Property Damage

Bill 164 continued the system of compensation for vehicle damage established under Bill 68.

## Dispute Resolution System

Bill 164 continued the dispute resolution system for accident benefits established under Bill 68.

## Bill 164: Cost Concerns

When Bill 164 was introduced, the insurance industry warned that the richer no-fault benefits it contained, together with the expanded right to sue for non-economic loss, would cause insurance rates to rise significantly. The insurance industry also disputed the government's claim that Bill 68 had created excess profits for insurance companies and that they had failed to pass those savings on to consumers. Although the industry acknowledged that profits had improved in the period immediately following Bill 68, it argued that profitability in the industry was beginning to decline. (See table below.)

To allay industry concerns, the government released the results of a study conducted by its actuary, William M. Mercer Ltd., which estimated that Bill 164 would require only a 4% increase in existing premiums.<sup>18</sup> The insurance industry countered with its own actuarial studies which suggested that the government was under-estimating the effects of the Bill.<sup>19</sup>

The insurance industry argues that the most recent round of rate increases (see table below) reflect the concerns it expressed about Bill 164 at the time it was introduced. Specifically, the industry argues that the enriched accident benefits established under Bill 164, noted below, are putting upward pressure on rates.

- ▶ Bill 164 increased the weekly income replacement benefit from 80% of gross income (up to a maximum of \$600 per week), to 90% of net income (up to a maximum of \$1,000 per week).<sup>20</sup>
- ▶ Bill 164 provides weekly income replacement benefits to those who were not employed at the time of an accident, but who had been employed at some point in the previous three years.

- ▶ Bill 164 removed the \$500,000 cap on long-term care benefits (i.e., benefits are now unlimited) and increased the maximum amount payable monthly from \$3,000 to \$10,000.
- ▶ A surviving spouse now receives between \$50,000 and \$200,000 in death benefits, up from a maximum of \$25,000 under Bill 68.
- ▶ Bill 164 increased the maximum amount of funeral benefits from \$3,000 to \$6,000.
- ▶ Bill 164 makes it more difficult for an insurance company to cut off benefits to someone the company believes is no longer eligible to receive benefits.
- ▶ All statutory accident benefits under Bill 164 (except the disability benefit for those outside the workforce) are indexed to the Consumer Price Index, whereas Bill 68's no-fault benefits were not indexed to inflation.

The insurance industry contends that, although Bill 164 eliminated the right to sue for economic loss, any resulting savings were more than offset by the expansion of the right to sue for non-economic loss. In particular, the industry points out that the increased costs associated with investigating more claims for non-economic loss (i.e., to determine fault and the level of damages) have produced higher premiums for consumers.<sup>21</sup>

Critics of the government's auto insurance plan have also argued that the imposition of a 5% sales tax on automobile insurance premiums (effective 1 July 1993) has aggravated the effects of Bill 164.<sup>22</sup>

However, factors other than Bill 164 have also been cited as reasons for the upward trend in rates. For example, it has been noted that cars are more expensive to repair today than they were several years ago. The switch to uni-body construction in the 1980s has increased the cost of body work. New safety and electronic devices developed in the 1990s have also increased repair costs. In addition, the number of claims per driver has been steadily increasing over the last 10 years. And the higher costs associated with advanced medical technology have also contributed to the amount paid out by insurance companies.<sup>23</sup>

The table below sets out auto insurance rate increases in Ontario since 1988, as reported by the Ontario Insurance Commission.



Year (From January 1 to December 31)	Average Percentage Increase In Private Passenger Auto Insurance Rates*
1988	7.7%
1989	8.0%
1990	2.9%
1991	1 % (decrease)
1992	1.9% (decrease)
1993	6.7%
1994	11.5%
1995 (Based on approvals for 25 companies between Oct. 1 and Dec. 31, 1994)	9.8%

\*Note: The 5% sales tax on auto insurance premiums that took effect on July 1, 1993 is not included in the above figures.

Source: Ontario Insurance Commission, Ontario Auto Insurance Index, 23 January 1995.

The Ontario Insurance Commission also reported early this year that the Facility Association has just increased its rates by 20%.<sup>24</sup>

Other figures recently released by the Commission show that, between January 1, 1988 and December 31, 1994, auto insurance rates increased 38.3% in Ontario, and increased 68% in Canada as a whole. The Ontario Consumer Price Index for this same period increased 23%.<sup>25</sup>

The next table sets out auto insurance industry profits since 1986, as reported by the Insurance Bureau of Canada.

YEAR	Ontario Auto Insurance Companies Net Pre-tax Income (million \$)
1986	327 (loss)
1987	138 (loss)
1988	396 (loss)
1989	283 (loss)
1990	251
1991	705
1992	404
1993	95
1994 (first 9 months)	17

Source: Survey of member companies conducted by the Insurance Bureau of Canada.<sup>26</sup>

## Saskatchewan

In 1946, Saskatchewan became the first province in Canada to establish a publicly run auto insurance system. Under the *Automobile Accident Insurance Act*, the Saskatchewan General Insurance Office (now Saskatchewan General Insurance, or SGI) was given the exclusive right to provide the compulsory portion of the auto insurance plan.

Until January 1, 1995, the coverage provided by the public plan was similar to the coverage available under the tort system that existed in Ontario prior to Bill 68. Innocent accident victims had an unrestricted right to sue for all economic and non-economic loss, while limited no-fault benefits were available to all accident victims. Drivers were required to purchase third party liability coverage and no-fault benefits coverage from SGI. Additional coverage could be purchased, if desired, from either SGI or a private insurance company.

In 1993, consultants retained by the Saskatchewan government released a report that identified the following problems with the province's compulsory auto insurance program.<sup>27</sup>

- Existing no-fault benefits were inadequate, especially in comparison with other jurisdictions.



- ▶ Victims with similar injuries were treated differently, depending on fault.
- ▶ Rehabilitation benefits were particularly inadequate, and the tort system was not conducive to the development of proper rehabilitation programs.
- ▶ Although the number of accidents since 1984 had remained relatively constant, injury costs had increased by an average of 12% per year over that period.
- ▶ Relatively minor injuries accounted for about 50% of all tort claims paid.

The study concluded that, if these problems were not addressed, Saskatchewan drivers would face significant annual insurance rate increases.

After assessing a number of alternatives for reform, including threshold systems comparable to the one in place in Ontario at the time (Bill 68), the consultants recommended that the government adopt a "pure" no-fault plan. Under the recommended plan, the right to sue would be completely eliminated, while the level of no-fault benefits would be substantially increased. The consultants argued that a pure no-fault plan was the best way of ensuring:

- ▶ adequacy and fairness of compensation to all victims;
- ▶ health restoration, rehabilitation, economic loss replacement and compensation for pain and suffering;
- ▶ a long-term solution to the problems faced by the current system; and
- ▶ auto insurance would remain affordable.

Despite the consultant's recommendation, the government elected to implement a threshold no-fault system. Under the new threshold plan, which took effect on January 1, 1995,<sup>28</sup> innocent accident victims can sue for economic loss beyond \$50,000, and can sue for recovery of medical costs beyond \$100,000. (Note: For the years after 1995, the limit on economic loss will be adjusted according to changes in the average industrial wage.) Accident victims cannot sue for non-economic loss.

The new plan also provides enhanced no-fault benefits, including income replacement benefits of 90% of net income (up to a maximum of \$50,000), rehabilitation benefits (up to a maximum of \$500,000),

and a lump sum amount of up to \$125,000 for those victims who sustain "permanent impairment." Benefits are indexed to the annual rate of inflation, up to a maximum of 6%.

## Manitoba

Since 1971, the compulsory portion of auto insurance in Manitoba has been provided exclusively by the Manitoba Public Insurance Corporation (MPIC). Until March 1994, the plan was essentially the same as the plan that had existed in Saskatchewan prior to the recent amendments noted above. Manitoba's plan provided limited no-fault accident benefits, including weekly income replacement, compensation for medical and rehabilitation costs, and lump sum death benefits. Innocent accident victims had an unrestricted right to sue through the tort system.

In 1988, the Manitoba government appointed Judge Robert Kopstein of the Manitoba Provincial Court to conduct a study of auto insurance, with a view to finding "the most appropriate ways to ensure that the Manitoba Public Insurance Corporation continues to provide low cost, high quality automobile insurance to Manitoba drivers on a self-sustaining basis."

Judge Kopstein's *Report of the Autopac Review Commission*,<sup>29</sup> released in September 1988, identified the following deficiencies in the existing tort system of compensation:

- ▶ it can fail to compensate the innocent or it can fail to compensate the innocent to an acceptable level;
- ▶ it fails to compensate the normally careful driver who makes a mistake; and
- ▶ existing levels of no-fault accident benefits, together with the tort system, are inadequate, particularly for the seriously injured.

Judge Kopstein considered three alternative systems, including a threshold system similar to the one that would later be adopted in Ontario. He concluded that a threshold system was not an appropriate way to provide compensation because, for serious cases, entitlement to compensation is determined by fault.<sup>30</sup>

Accordingly, Judge Kopstein made the following recommendation:

Considering both costs and benefits, a pure no-fault plan . . . supplemented by optional extension coverage, would



bring a substantial improvement to bodily injury insurance protection in Manitoba, with the greatest potential for significant savings.<sup>31</sup>

On March 1, 1995, the Manitoba government implemented a pure no-fault auto insurance system,<sup>32</sup> based on the recommendations of the Kopstein Report. The plan, which continues to be administered by MPIC, has completely eliminated the right to sue. In return, every accident victim is entitled to significantly enhanced no-fault benefits, including unlimited coverage for medical expenses (i.e., those not covered by the provincial health insurance plan), rehabilitation expenses, and personal care expenses (e.g., housekeeping). In addition, the plan provides a weekly income replacement benefit equal to 90% of net earnings, up to a maximum of \$55,000 gross per year. For those who suffer permanent disability, lump sum payments are payable, based on the degree of disability, up to a maximum of \$100,000. Benefits are indexed to the annual rate of inflation, up to a maximum of 6%.

## CONCLUSION

Auto insurance has been a recurring issue in Ontario for more than 30 years. And with the recent increases in insurance rates, it has once again become the focus of current debate.

Prior to 1990, motor vehicle accident compensation was based primarily on the concept of fault. Although the deficiencies in the fault system had been criticized for many years, it was not until claims costs and premium rates began to rise in the mid-1980s that fundamental reform was seriously considered.

In June 1990, the Liberal government responded to the insurance "crisis" with Bill 68, which eliminated the right to sue for all but the most seriously injured accident victims, and established a system of compensation whereby most accident victims received compensation for economic loss, without regard to fault. The NDP government attempted to address perceived deficiencies in the system established under Bill 68 by increasing the level of no-fault benefits, eliminating the right to sue for economic loss, and expanding the right to sue for non-economic loss.

The increase in auto insurance rates in 1994, and the recently announced increases for 1995, have been attributed by the insurance industry in Ontario to the enriched benefits and expanded right to sue

provided under Bill 164. Others have attributed the recent rate increases to the rising costs of car repairs and medical treatment.

The government of Saskatchewan has attempted to deal with the problem of rising insurance rates by eliminating the right to sue for non-economic loss, and by restricting the right to sue for economic loss to those cases where economic loss exceeds \$50,000. In Manitoba, the government has attempted to contain costs by completely eliminating the right to sue.





## NOTES

<sup>1</sup>*Insurance Act*, R.S.O. 1980, c. 218, as amended, Schedule C.

<sup>2</sup>*The Report of the Osgoode Hall Study on Compensation for Victims of Automobile Accidents*, Allen M. Linden, Director (Toronto: Ryerson Press, 1965).

<sup>3</sup> Ontario Law Reform Commission, *Report on Motor Vehicle Accident Compensation* (Toronto: Ministry of the Attorney General, 1973).

<sup>4</sup> Ontario Legislative Assembly, Select Committee on Company Law, *The Insurance Industry: First Report on Automobile Insurance* (Toronto: The Committee, 1977).

<sup>5</sup> Ontario Legislative Assembly, Select Committee on Company Law, *The Insurance Industry: Second Report on Automobile Insurance* (Toronto: The Committee, 1978).

<sup>6</sup> Ontario Task Force on Insurance (Dr. David Slater, Chair), *Final Report* (Toronto: The Task Force, 1986).

<sup>7</sup> Ontario, Inquiry into Motor Vehicle Accident Compensation in Ontario (the Honourable Mr. Justice Coulter A. Osborne, Supreme Court of Ontario, Commissioner), *Report* (Toronto: Ministry of the Attorney General and Ministry of Financial Institutions, 1988).

<sup>8</sup> Allan O'Donnell, *Automobile Insurance in Ontario* (Toronto: Butterworths, 1991), p. 7.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ontario Automobile Insurance Board, Reference: An examination of threshold no-fault and choice no-fault systems of privately delivered automobile insurance, *Report* (North York: The Board, 1989).

<sup>12</sup> *Insurance Statute Law Amendment Act, 1990*, S.O. 1990, c. 2.

<sup>13</sup> *Insurance Act*, R.S.O. 1990, c. I.8., s. 266(1).

<sup>14</sup> Regulation 672, R.R.O. 1990.

<sup>15</sup> Bill 164, *An Act to amend the Insurance Act and certain other Acts in respect of Automobile Insurance and other Insurance Matters*, 1st Sess., 35th Leg. Ont. 40 Eliz. II, 1991.

<sup>16</sup> Ontario Automobile Insurance Review, *The Road Ahead: Ontario's Strategy For Automobile Insurance Reform* (Toronto: Minister of Financial Institutions, 1991), pp. 1-3.

Hereafter cited as "The Road Ahead".

<sup>17</sup>*Insurance Act*, R.S.O. 1990, c. I.8, s. 267.1(1) and (2).

<sup>18</sup>William M. Mercer Ltd., *Actuarial Costing of the Road Ahead: A Comparative Study* (Toronto: Ontario Automobile Insurance Review, Minister of Financial Institutions, 1992).

<sup>19</sup>See study prepared by The Coopers and Lybrand Consulting Group, commissioned by State Farm Insurance Company, *Ontario Bill 164: The Economic Consequences For Consumers, Investors and the Automobile Insurance Marketplace* (Toronto: Coopers and Lybrand, 1992); and a study by the Wyatt Company, commissioned by the Insurance Bureau of Canada, as reported in "Car insurance rates to increase by \$200, study predicts," *Globe and Mail*, 12 January 1993, p. A4.

<sup>20</sup>The government estimated that the \$1,000 per week benefit would cover more than 90% of income earners in Ontario, up from the 75% covered under Bill 68. See: *The Road Ahead*, p. 15.

<sup>21</sup>"Ontario insurance rates up an average of 9.8%," *Globe and Mail*, 24 January 1995, p. B1.

<sup>22</sup>"Election-like war of words breaks out at Queen's Park," *Globe and Mail*, 10 February 1995, p. A9.

<sup>23</sup>"Missing the mark on auto insurance," *Globe and Mail*, 24 February 1995, p. A7.

<sup>24</sup>"Auto insurance rates roar ahead," *Toronto Star*, 2 February 1995, p. B1.

<sup>25</sup>*Ibid.*

<sup>26</sup>Survey results provided by Stan Griffin, Vice President (Ontario), Insurance Bureau of Canada, Toronto, 5 January 1993, and by Tim Logie, Insurance Bureau of Canada, Statistical Division, Toronto, 28 September 1994. 1994 figure taken from "Soaring car rates stir fury at NDP," *Toronto Star*, 13 February 1995, p. A1.

<sup>27</sup>Sobeco, Ernst and Young, *Saskatchewan Government Insurance: Automobile Injury Study* (Sobeco, Ernst and Young, March 1993).

<sup>28</sup>*The Automobile Accident Insurance Amendment Act, 1994*, S.S. 1994, c. 34.

<sup>29</sup>*Report of the Autopac Review Commission* (2 Vols.), Judge Robert L. Kopstein, Commissioner (Winnipeg: Statutory Publications of Manitoba, September 1988).

<sup>30</sup>*Ibid.*, Volume II, Position Paper No. 2, p. 95.

<sup>31</sup>*Ibid.*

<sup>32</sup>*The Manitoba Public Insurance Corporation Amendment And Consequential Amendments Act, 1993, S.M. 1993, c. 36.*







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